

REMARKS/ARGUMENT

Claims 1-9, 11-26, 28-38, 41-43, 47, 48, 51-53, and 57-60 are pending in the present application. Claims 10, 27, 39, 40, 44-46, 49, 50, and 54-56 were previously cancelled. Claims 61-68 are presently cancelled without prejudice in response to the Restriction Requirement dated December 10, 2008 ("Restriction Requirement"). No new matter has been added.

Reconsideration of the claims based on the below comments is respectfully requested.

In the Restriction Requirement, it was maintained that the present application contains claims directed to the following patentability distinct inventions:

Species I: Claims 1-9, 11-21, 37, 38, 41, 47, 48, 51, 57, and 59;

Species II: Claims 22-26, 28-36, 42, 43, 52, 53, 58, and 60; and

Species III: Claims 61-68.

Election of Species I with Traverse

Applicants elect the Species I claims with traverse.

Applicants traverse the restriction requirement because the distinction between the Species I and Species II groupings of claims is not understood. The restriction requirement fails to inform the Applicants as to the criteria being used to divide claims and/or the manner in which that criteria are being applied. M.P.E.P. § 814 states:

The examiner must provide a clear and detailed record of the restriction requirement to provide a clear demarcation between restricted inventions so that it can be determined whether inventions claimed in a continuing application are consonant with the restriction requirement and therefore subject to the prohibition against double patenting rejections under 35 U.S.C. 121. *Geneva Pharms. Inc. v. GlaxoSmithKline PLC*, 349 F.3d 1373, 1381, 68 USPQ2d 1865, 1871 (Fed. Cir. 2003)." (Emphasis added).

Applicants also traverse any characterization of the claims that might narrow their scope. Instead, each claim is limited only by the limitations recited therein. In this regard, Applicants

do not follow any alleged distinction recited in the above restriction requirement and maintains that each claim is limited only by the limitations recited in each claim. Reconsideration is respectfully requested along with an indication of allowance or an action on the merits.

Applicants maintain the right to pursue the subject matter of the restricted claims in one or more divisional applications.

CONCLUSION

Applicants submit that claims 1-9, 11-26, 28-38, 41-43, 47-48, 51-53, and 57-60 are in condition for allowance and action toward that is respectfully requested. If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (312) 425-8552.

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It is believed that no fees are due at this time; however, should any additional fees be required (except for payment of the issue fee), or credit for overpayments be due, the Commissioner is also authorized to deduct the fees from, or credit the overpayments to Nixon Peabody Deposit Account No. 50-4181, Order No. 247171-000379USP1.

Respectfully submitted,

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